IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Applicants: Bednorz et al.

Serial No.: 08/479,810

Filed: June 7, 1995

Appeal No. 2009-003320

Date: Jan. 1, 2010

Docket: YO987074US5

Group Art Unit: 1751

Examiner: M. Kopec

For: NEW SUPERCONDUCTIVE COMPOUNDS HAVING HIGH TRANSITION TEMPERATURE, METHODS FOR THEIR USE AND PREPARATION

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SUPPLEMENT 3
REQUEST FOR REHEQRING
UNDER
37 C.F.R. § 41.52 (a)(1)
Of
Decision on Appeal dated 09/17/2009

Sir: Please consider the following.

Pursuant to 37 C.F.R. § 41.51 (a)(1) appellants request rehearing of the Decision on Appeal dated 09/17/2009 (Board's Decision).

The Request For Rehearing submitted on Nov. 19, 2009 shall be referred to herein as the Initial Request or the Initial Request for Rehearing. The Supplement submitted on 12/10/2009 shall be referred to as Supplement 1 or the Supplement 1 Request for Rehearing. The Supplement submitted on 12/18/2009 shall be referred to as Supplement 2 or the Supplement 2 Request for Rehearing and this paper shall be referred to as Supplement 3 or the Supplement 3 Request fro Rehearing.

ARGUMENT

The Initial Request at page 85, lines 1-21, notes *In re Wands* states quoting from *Ex parte Jackson:*

> The determination of what constitutes undue experimentation in a given case requires the application of a standard of reasonableness, having due regard for the nature of the invention and the state of the art. Ansul Co. v. Uniroyal, Inc. [448 F.2d 872, 878-79; 169 USPQ 759, 762-63 (2d Cir. 1971), cert. denied, 404 U.S. 1018, 30 L. Ed. 2d 666, 92 S. Ct. 680 (1972)]. The test is not merely quantitative, since a considerable amount of experimentation is permissible, if it is merely routine, or if the specification in question provides a reasonable amount of guidance with respect to the direction in which the experimentation should proceed
>
> In re Wands, 858 F.2d 731, 737 (Fed. Cir. 1988)

This quote from *In re Wands* includes the following quotation from *Ex parte Jackson* "[t]he test is not merely quantitative, since a considerable amount of experimentation is permissible, if it is merely routine, **or** if the specification in question provides a reasonable amount of guidance with respect to the direction in which the experimentation should proceed." (Emphasis added.)]

Thus *In re Wands* refers to Second Circuit Court of Appeals decision *Ansul Co. v. Uniroyal, Inc.* 448 F.2d 872, 878-79; 169 USPQ 759 referred to herein as *Ansul*, for which the United States Supreme Court denied certiorari, with approval. *Ansul* supports Appellants' position and does not support the Boards' Decision.

Ansul states:

> The product involved in this case is an agricultural chemical commonly called "maleic hydrazide" (MH). It was discovered in 1894, but was not considered useful until 1947 when two of Uniroyal's employees found that, mixed with a wetting agent, it could inhibit the growth of certain plants without otherwise harming them. Uniroyal applied for a patent on the product in 1949; and in 1952, the Patent Office issued it patent 916, which expired in October 1969. The two claims of that patent at issue here are claim 1, the composition or product claim which describes the chemical

> composition itself, and claim 7, the method or use claim which describes how the product can be used to treat certain growing plants so as to alter their growth characteristics.
> Ansul Co. v. Uniroyal, Inc., 448 F.2d 872, 875 (2d Cir. 1971)

The patent at issue in *Ansul* shall be referred to herein as the *Ansul* patent.

Ansul citing the district court decision states:

> Maleic hydrazide was described in the prior art as early as 1894. All that Uniroyal's chemists did in the late 1940's was to add a wetting agent; and according to the district court, wetting agents and their function were known long before that time. The court stated that maleic hydrazide and the wetting agent "were old elements well known to the prior art" and that "in combination, [maleic hydrazide] and a wetting agent each is limited to performing the same function which it always has performed independent of the other"; the wetting agent "does not, however, make the [maleic hydrazide] any more active. Thus it simply performs the same function that it would perform if used with any other chemical in solution." 301 F. Supp. at 282.
> Ansul Co. v. Uniroyal, Inc., 448 F.2d 872, 876 (2d Cir. 1971)

In *Ansul* claims 1 and 7 under review are:

- Claim 1 describes the following composition: "1. An agricultural chemical composition comprising material of the group consisting of [maleic hydrazide] and its salts, said composition containing a wetting agent." Ansul Co. v. Uniroyal, Inc., 448 F.2d 872, 876 (2d Cir. 1971)
- Claim 7 is a use or method claim, which reads: "The method which comprises treating growing plants with material of the group consisting of [maleic hydrazide] and its salts in a concentration and amount sufficient to alter the growth characteristics of said plants." Ansul Co. v. Uniroyal, Inc., 448 F.2d 872, 877 (2d Cir. 1971)

Claim 1 was found obvious since maleic hydrazide (MH) was a known composition and use of wetting agents was known prior to the invention of *Ansul* claim 1. Claim 1 was found obvious by the district court since "the mixture of maleic hydrazide with a wetting agent, claimed in claim 1, was merely an aggregation of two old substances

each performing its separate function, and hence was not patentable as a new product." Ansul Co. v. Uniroyal, Inc., 448 F.2d 872, 877 (2d Cir. 1971) The circuit court agreed claim 1 was obvious since it was not directed to the function and use of the new composition, which is covered in claim 7, which was not alleged to be obvious by defendant Ansul. Defendant Ansul alleged claim 7 was not enabled under 35 USC 112, second paragraph.

This has similarity to the situation presented by the present appeal. As stated in Appellants' Brief the initial claims presented for examination were composition of matter claims which recited the high T_C property. As describe in BV1 and summarized in BV3, pages 4 -5, as the Examiner's Third Enablement Statement, theses claims were found not patentable for being anticipated since the high T_C property was inherent in known prior art compositions. In response Appellants presented the apparatus, device, combination, structure, etc. claims under appeal in which high T_C elements are used. These claims were all initially rejected as not enabled, some being latter allowed by the Examiner and more being allowed by the Board's Decision.

In *Ansul* the plaintiff asserted claim 7 against the defendants' use of claim 7 on tobacco plants.

This is the Second Circuits analysis:

> Plaintiffs contend that claim 7 is too general to meet these requirements [of 35 USC 112, first paragraph], i.e., that it does not define how to use the new composition with any exactitude, clarity, or distinctness. According to plaintiffs, the words of claim 7 "growing plants" could apply to any of half a million plants, and the patent discloses but a few paltry examples of experimentation with maleic hydrazide on a single variety of tomatoes, corn, peas, a few weeds, and some grasses. Yet the patent proceeds to make claims encompassing the entire plant kingdom without distinguishing among the types. The result, say plaintiffs, is to invite those skilled in the art to engage in broad, extensive, and time-consuming experimentation in order to determine which plants are temporarily inhibited by MH, which are killed, which remain unaffected or are even stimulated to more growth,

and what concentration, dosage rate, salts, and wetting agents are to be used to obtain specific results. Moreover, plaintiffs argue, the real utility of MH -- for tobacco -- is not disclosed or hinted at in the patent, and indeed was discovered by scientists unconnected with [defendant]Uniroyal.

Plaintiffs also contend that the words "alter the growth characteristics" are too broad, since they could cover growth promotion as well as inhibition, and that the term "salts" is likewise too broad, since it covers an indefinite amount of compounds, not all of which are operative with the maleic hydrazide.

Judge Mansfield [the District Court judge] rejected these contentions and we agree. Claim 7 was necessarily broad and generic because Uniroyal's discovery "opened up a new art" and was "an entirely new use for an existing composition" (301 F. Supp. at 284-285), as distinguished from a minor improvement in a crowded art. As the district judge stated, "an inventor who discovers a basic new use is not required specifically to disclose, or even be aware of, all the uses of his invention." 301 F. Supp. at 290-291. See B.G. Corp. v. Walter Kidde & Co., 79 F.2d 20, 22 (2d Cir. 1935).

We reject plaintiffs' argument that the words of the patent were insufficient to enable one skilled in the art to select and determine, out of countless possibilities, the particular concentration, dosage, etc. of MH that would produce the desired result on a particular plant. As Judge Mansfield stated, "the necessity for conducting experimentation or preliminary tests to determine the successful application of an invention * * * will not invalidate a patent, provided one skilled in the art could determine and select the necessary experiments or tests without unreasonable difficulty." 301 F. Supp. 285. See Georgia-Pacific Corp. v. U.S. Plywood Corp., 258 F.2d 124, 136 (2d Cir.), cert. denied, 358 U.S. 884, 79 S. Ct. 124, 3 L. Ed. 2d 112 (1958).

Judge Mansfield found that the disclosures of claim 7 did not place such an unreasonable burden upon one skilled in the art. He found that those skilled in the art in the late 1940's already understood many factors that would limit greatly the number of experiments that would have to have been done. Then he stated: "The ultimate answer to Ansul's

contention lies in the testing conducted by research personnel to whom Uniroyal furnished samples of the MH compound with disclosures as to its new use. With astonishing rapidity they used the new discovery and teachings in routine experiments, featuring routine screening techniques, to develop practical uses for the product. None of this would have occurred, of course, if it had not been for Uniroyal's disclosure of the basic secret with sufficient information for researchers to use the compound in their regular sampling procedures." 301 F. Supp. at 287-288.

Indeed, the two chemists who discovered the usefulness of MH on tobacco and onions were among these experimenters. Thus, Judge Mansfield held that "in the face of such substantial evidence of the minor experimentation needed to perfect the use of the compound, once its generic use had been disclosed, * * * the specification of the 916 patent reasonably 'enables any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same . . . .'" 301 F. Supp. at 288. [**14]

For similar reasons, Judge Mansfield rejected plaintiffs' argument that the words "alter growth characteristics" were overbroad. With respect to the alleged overbreadth of "salts," Judge Mansfield again found that "* * * the evidence amply indicated that those skilled in the art had no difficulty in relying on their skill to determine which salts of [maleic hydrazide] they should use. No substantial or difficult experimentation was required for this purpose; the specification served as an effective teacher and it was well known in the art that certain salts would be toxic or prevent absorption of the [maleic hydrazide] by the plant. Consequently, as to those to whom the patent was directed, the term 'salts' was not too broad." 301 F. Supp. at 289.

We agree. Admittedly, the disclosures of claim 7 are very general and give meager information as to how to use the product. Yet the test is whether they are sufficient to enable a person skilled in the art to make and use the product without undue experimentation. The question whether the disclosures here were sufficient to do so is a factual matter and there is substantial evidence to support the trial court's findings. Indeed, the speed with which the two chemists used the MH composition successfully on tobacco and

> onions, once Uniroyal provided them with the composition and with the information that it could inhibit the growth of plants, is clear evidence that claim 7's disclosures were sufficient.
>
> Ansul Co. v. Uniroyal, Inc., 448 F.2d 872, 877-879 (2d Cir. 1971)

This analysis will be referred to as the Ansul Enablement Statement and can be applied to Appellants' Subsection III claims to find them enabled. The Ansul Enablement Statement finds the Ansul claim 7 directed to "'growing plants' could apply to any of half a million plants, and the [Ansul] patent discloses but a few paltry examples of experimentation with maleic hydrazide on a single variety of tomatoes, corn, peas, a few weeds, and some grasses" was enabled.

Appellants make the following four observations about the Board's Decision:

1. The Board's Decision at page 30, lines 4-9, states in regards to Appellants' Specification:

   > the Specification provides 23 pages of disclosure concerning these mixed transition metal oxides and their constituent elements (i.e., transition metals, rare earth and rare earth-like elements, and alkaline earths) but does not provide any disclosure at all of making high temperature superconductors from any other specifically identified elements."

2. Supplement 1 page 23, lines 16 -24, states:

   > The Board's Decision has created a non-existent per se rule of lack of enablement from the *Genentech* decision that stands for the proposition that even if there are enabled species that come within the scope of a claim under examination, the claim is not enabled, if the claim includes within its scope species for which the specification does not explicitly describe starting materials and starting conditions, even if those undisclosed staring materials and starting conditions can be determined by routine experimentation by persons of ordinary skill in the art from what is known to them to make such other species. *Genentech* announced no such per se rule. This cannot be a correct statement of the law since it is well settled law that all species that come with in the scope of a claim do not

> have to be foreseen or known in advance for that claim to be enabled. The use and application of *Genentech* by the Board to create the Board's created per se rule to find the Subsection III claims not enabled is an error of law.

3.Supplement 1 page 44, lines 6 -14, states:

> Also as [sic] stated above the Board's Decision provides no legal authority for the statement that "a reasonable amount of direction or guidance in identifying the compositions in question as possessing high temperature superconductive characteristics" is necessary to satisfy the enablement requirement. There is no United States Federal Court decision that states that "a reasonable amount of direction or guidance in identifying" species that come [sic] within the scope of a claim in necessary to satisfy the enablement requirement of that claim to its full scope. As stated above it is well settled law that a patent applicant does not have to foresee in advance all species that come within the scope of a claim for the claim to be enabled to its full scope.

4. The Board' Decision in the sentence bridging page 21-22 states referring to *In re Wright:*

> For reasons detailed below, the art of high temperature superconductivity is generally unpredictable in that there is generally no reasonable expectation of successfully achieving high temperature superconductivity.

Applying the four observations on the Board's Decision to the decision in *Ansul* the following observations are made:

1. If in *Ansul* "a few paltry examples of experimentation with maleic hydrazide on a single variety of tomatoes, corn, peas, a few weeds, and some grasses" was sufficient to satisfy enablement for 500, 000 plant varieties, Appellants' 23 pages of examples should be sufficient to find Appellants Subsection III claims enabled , in particular for Subsection III claims directed to ceramics, ceramic like materials, materials with ceramic characteristics, etc and/or that can be made by known principles or ceramic science.

2. In *Ansul* there is no requirement to explicitly describe starting materials and starting conditions for the close to 500, 000 plant species that are not described in the specification under review in *Ansul*.
3. In *Ansul* there is no requirement of a reasonable amount of direction or guidance in identifying the plant species in question whose growth characteristics will be altered and/or in what way they will be altered and if they will not be altered at all .
4. In *Ansul* there is no requirement for *Ansul* claim 7, which is directed to plants, generically recited, treated with a combination of chemical compounds, generically recited, that there be a reasonable expectation of successfully achieving altered growth characteristics of the plant without experimentation to determine if there is such altered growth characteristics. This is the holding of *Ansul* even though living things that are generally considered unpredictable and chemical compounds are generally considered unpredictable.

The Court in *Ansul* did not find that the word recited in claim 7 "alter the growth characteristics" and "salts" were too broad resulting in claim 7 being not enabled "since it covered an indefinite amount of compounds." Thus Appellants Subsection III claims are not too broad to not be enabled "since [they] cover… an indefinite amount of compounds." In *Ansul* there is no requirement that the starting conditions and starting materials be described in the patent under review for all the "indefinite amount of compounds" included within the scope of *Ansul* claim 7. Correspondingly, three is no requirement that the starting conditions and starting materials be described in Appellants' Specification for all species that come within the scope of Appellants' Subsection III claims as required by the Board's Decision. In *Ansul* there is no requirement that three be a reasonable expectation of successfully achieving altered growth characteristics of the plant without experimentation to determine if there is such altered growth characteristics or that there be a reasonable expectation of successfully achieving a salt that will result in the altered growth characteristics without experimentation to determine which salts will work and which plants the method will work on successfully. As stated many times in the prosecution of the present

Application under appeal, there is no evidence that persons of skill in the art cannot make and test species that come within the scope of the Subsection III claims. The Board's Decision paragraph bridging pages 31-32 states:

> [W] do not agree with Appellants that the mere capability to make and test compositions encompassed by the claims under review satisfies the enablement requirement. Rather, enablement requires the Specification to teach those skilled in the art how to make and use the full scope of the claimed invention without undue experimentation wherein it is the Specification, not the knowledge of one skilled in the art, that must supply the novel aspects of an invention in order to constitute adequate enablement. Genentech, 108 F.3d at 1365-1366.

This language from the Board's Decision is directly contradicted by the Second Circuit court of Appeals decision in *Ansul*. Thus the Board's Decision is an error of law

Ansul states (see the Ansul Enablement Statement) the District Court judge "rejected [Ansul's] ...contentions and we agree. Claim 7 was necessarily broad and generic because Uniroyal's discovery 'opened up a new art' and was 'an entirely new use for an existing composition' ... as distinguished from a minor improvement in a crowded art. As the district judge stated, '**an inventor who discovers a basic new use is not required specifically to disclose, or even be aware of, all the uses of his invention.**'" (Emphasis added.) Following the rational of the Second Circuit Court of Appeals in *Ansul* Appellants' Subsection III claims are "necessarily broad and generic because [Appellants'] discovery 'opened up a new art' and was 'an entirely new use for an existing composition[and for other compositions that can be determined without ingenuity beyond that possessed by persons of ordinary skill in the art]' ... as distinguished from a minor improvement in a crowded art. As the district judge stated, '**an inventor who discovers a basic new use is not required specifically to disclose, or even be aware of, all the uses of his invention.**'" The Board's Decision requires Appellants' Specification to disclose the starting materials and starting conditions for all species that come within the scope of Appellants Subsection III claims and requires that there be reasonable expectation of success in knowing which species has the high T_C property before making and testing those species using known methods. This is directly in conflict with the Second Circuit court of Appeals in *Ansul* and is thus an error of law.

The Second Circuit Ansul decision states (see the Ansul Enablement Statement):

> We reject plaintiffs' argument that the words of the patent were insufficient to enable one skilled in the art to select and determine, out of countless possibilities, the particular concentration, dosage, etc. of MH that would produce the desired result on a particular plant. As Judge Mansfield stated, "the necessity for conducting experimentation or preliminary tests to determine the successful application of an invention * * * will not invalidate a patent, provided one skilled in the art could determine and select the necessary experiments or tests without unreasonable difficulty."

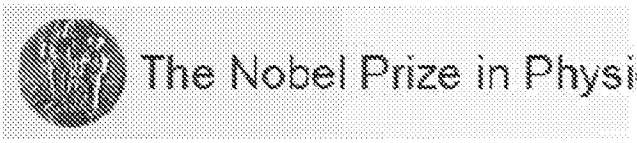
Applying this rational of the Second Circuit Court of Appeals to the present appeal, the Board's Decision is an error of law by finding that the words of the Appellants' Specification is]insufficient to enable one skilled in the art to select and determine, out of countless possibilities, the particular superconductor that would produce the desired high T_C property.".. As Judge Mansfield stated in the district court decision in *Ansul* which the Second Circuit Court of Appeals adopted in its decision in *Ansul* , "the necessity for conducting experimentation or preliminary tests to determine the successful application of an invention * * * will not invalidate a patent, provided one skilled in the art could determine and select the necessary experiments or tests without unreasonable difficulty." In the present Application on appeal there is no evidence to show that "one skilled in the art could [not] determine and select the necessary experiments or tests without unreasonable difficulty" to determine species that come within the scope of Appellants' Subsection III claims outside of the scope that the Board's Decision has found enabled. Thus there is no evidence that Appellants' Specification is "insufficient to enable one skilled in the art to select and determine, out of countless possibilities, the particular [superconducting material] ...that would produce the desired result" of a having the T_C property. Since the Board's Decision found to the contrary, it is in conflict with eh Second Circuit Court of Appeals' decision in *Ansul* and is thus an error of law.

The Second Circuit *Ansul* decision quoting the district court *Ansul* decision states (see the Ansul Enablement Statement):

:

> "The ultimate answer to Ansul's contention lies in the testing conducted by research personnel to whom Uniroyal furnished samples of the MH compound with disclosures as to its new use. With astonishing rapidity they used the new discovery and teachings in routine experiments, featuring routine screening techniques, to develop practical uses for the product. None of this would have occurred, of course, if it had not been for Uniroyal's disclosure of the basic secret with sufficient information for researchers to use the compound in their regular sampling procedures."

In the present Application on appeal it is uncontested that once Appellants disclosed their discovery other species were rapidly made following Appellants' teaching which is evidence that persons of skill in the art know how to make and test species that come within the scope of the Subsection III claims outside the scope of what the Board's Decision has found enabled. It is uncontested that there is no evidence to the contrary. The Poole 1988 Enablement Statement (BV3 page6) is evidence of this. It states "the widely used solid-state technique permits off-the-shelf chemicals to be directly calcined into superconductors, and it requires little familiarity with the subtle physicochemical process involved in the transformation of a mixture of compounds into a superconductor." The "basic secret" discovered by Appellants is what they were awarded the 1987 Nobel Prize in Physics for discovering as stated at the Nobel Prize website. (See initial Request page 4)



No one knew this prior to Appellants' discovery. It is uncontested that only Appellants' teaching, in particular the teaching directed to known principles of ceramic science, is needed to make species that come within the scope of the Subsection III claims outside the scope of what the Board's Decision has found allowed.

The Second Circuit *Ansul* decision quoting the district court *Ansul* decision states (see the Ansul Enablement Statement):

> "in the face of such substantial evidence of the minor experimentation needed to perfect the use of the compound, once its generic use had been disclosed, * * * the specification of the 916 patent reasonably 'enables any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same . . . .'"

As stated above the Poole 1988 Enablement Statement (BV3 page6) states "the widely used solid-state technique permits off-the-shelf chemicals to be directly calcined into superconductors, and it requires little familiarity with the subtle physicochemical process involved in the transformation of a mixture of compounds into a superconductor." Thus in the present Application under appeal minimum experimentation is needed to determine and test other species that come within the Scope of Appellants Subsection III claims outside the scope of what the Board's Decision has found enabled.

The Second Circuit in *Ansul* agreed with the following rational of the district court (see the Ansul Enablement Statement):

> [The District Court] rejected plaintiffs' argument that the words "alter growth characteristics" were overbroad. With respect to the alleged overbreadth of "salts," [The District Court] again found that "* * * the evidence amply indicated that those skilled in the art had no difficulty in relying on their skill to determine which salts of [maleic hydrazide] they should use. No substantial or difficult experimentation was required for this purpose; the specification served as an effective teacher and it was well known in the art that certain salts would be toxic or prevent absorption of the [maleic hydrazide] by the plant. Consequently, as to those to whom the patent was directed, the term 'salts' was not too broad."

Applying this rational to the Subsection III claims on appeal here Appellants' Subsection III claims are not overbroad. Appellants' evidence amply indicates that those skilled in the art had and have no difficulty in relying on their skill to determine which other materials are high T_C superconductors. The Board's Decision shows no evidence of substantial or difficult experimentation is

required for this purpose. Appellants' Specification serves as an effective teacher and it is well known in the art that how to make and test species that come within the scope of the Subsection III claims but outside of the scope that the Board's Decision has found enabled. Thus the Board's Decision is an error of law.

The Second Circuit in *Ansul* concludes (see the Ansul Enablement Statement):

> We agree. Admittedly, the disclosures of claim 7 are very general and give meager information as to how to use the product. Yet the test is whether they are sufficient to enable a person skilled in the art to make and use the product without undue experimentation. The question whether the disclosures here were sufficient to do so is a factual matter and there is substantial evidence to support the trial court's findings. Indeed, the speed with which the two chemists used the MH composition successfully on tobacco and onions, once Uniroyal provided them with the composition and with the information that it could inhibit the growth of plants, is clear evidence that claim 7's disclosures were sufficient.

As in *Ansul* in the present application there is substantial evidence that even though Appellants' Subsection III claims are very general and Appellants' specific 23 pages of embodiments are directed to the Subsection II claims, Appellants' teaching is sufficient to enable a person skilled in the art to make and use the Subsection III claims without undue experimentation. The speed with which others made other species is clear evidence of this which is because as stated by the Pool 1988 Enablement Statement (BV3 page6) "the widely used solid-state technique permits off-the-shelf chemicals to be directly calcined into superconductors, and it requires little familiarity with the subtle physicochemical process involved in the transformation of a mixture of compounds into a superconductor." Testing for superconductivity has been know since the discovery of superconductivity in 1911. (See BV1 paragraph bridging pages 126-127.). There is no evidence to the contrary.

As stated above in *Ansul* "'maleic hydrazide' (MH)...was discovered in 1894, but was not considered useful until 1947 when two of Uniroyal's employees found that, mixed with a wetting agent, it could inhibit the growth of certain plants without otherwise

harming them." (See the Ansul Enablement Statement.) Appellants note that *Ansul* claim 1 explicitly recites a "wetting agent," but *Ansul* claim 7 does not. Claim 7 was found enabled without reciting a wetting agent, which when mixed with MH it had the desired property of inhibiting plant growth, which means that claim 7 includes within its scope an indeterminate number of wetting agents and was found enabled. There is no requirement that the starting materials and starting conditions to make all the indeterminate number of wetting agents be specified in the *Ansul* patent and there was no requirement that there be a reasonable expectation that a particular wetting agent would, when combined with MH, have this desired property before experimentally determining if it did have the desired property. It was not necessary for the *Ansul* patent to identify the wetting agents and salts in question when combined with MH as possessing this desired property. The Board's Decision if applied to situation of *Ansul* I would find *Ansul* claim 7 not enabled. Thus the Board Decision is in conflict with *Ansul* and is an error of law.

CONCLUSION

For the reasons given in the Initial Request for Rehearing, Supplement 1, Supplement 2 and this Supplement 3, Appellants request the Boart to reverse the rejection of the Subsection III claims found not enabled in the Final Action and for which the Board's Decisions did not reverse the Examiner's rejections, in particular for those claims reciting that the superconductive element can be made by know principles of ceramic science and/or be a ceramic, ceramic like material or having a ceramic characteristic, etc. as identified in the Initial Request for Rehearing.

Please charge any fee necessary to enter this paper and any previous paper to deposit account 09-0468.

Respectfully submitted,

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